

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO**CRIMINAL PETITION No.13918 of 2018****ORDER:**

The petitioners are A1 to A4 of Crime No.503 of 2018 of Mills Colony Police Station, Warangal, registered for the offence punishable under Section 306 IPC which is outcome of the report of the second respondent *de facto* complainant dated 14.12.2018 to the Station House Officer, Mills Colony Police Station, Warangal, which reads that his father Rajeshwar Rao along with Koduri Bikshapathi, Bathini Madhusudan, Palle Mallesham and Gudu Vivekanand did a private chit finance business at Hunter road, Warangal, eight years back with partnership and his father Rajeshwar Rao died in the year 2017. Thereafter, the said persons colluded *inter se* and not paid the amount to the chit members stating that chit fund company is in loss. The *de facto* complainant and his father demanded many a time to show the accounts but the accused never disclosed the accounts during the lifetime of his father, who has to repay three crores to the members by arranging funds by sale of his properties and the above four accused persons did not respond to the contribution and they used to threaten his father. Fifteen days back he – *de facto* complainant along with his father and their relative M.Bhaskar went to Koduru Bikshapathi, where other accused among A1 to A4, requested to show the accounts of the chit fund business, they responded

negligently saying they will not disclose the accounts even when his father stated if they fail to do so, he would commit suicide, in response saying they would not bother even if he commit suicide and there from he felt mental agony and the complainant along with his relative requested the accused to come over to their house and they came on 05.12.2018, they picked up quarrel with his father by reiterating they would not bother even if he commits suicide and left their house. It is on that day at about 03.30 p.m., their father found in unconscious state in the office, immediately they shifted to Samraksha hospital, Warangal, and therefrom to Yashoda hospital, Secunderabad, while undergoing treatment, he breathed the last on the date of report at 05.00 a.m. and there are 50 pesticide poison bottles and because of the harassment by accused, the deceased committed suicide by leaving a suicide note written by mentioning as the accused are responsible for his suicide. Hence to take action.

2. The contentions in the quash petition are that A1 to A4 are only Directors of the Company and they left the Company more than 3 ½ years back and the present complaint is filed with a *malafide* intention to extract money by *de facto* complainant taking advantage of his father's suicidal death and it is the deceased who started the Company along with the petitioners accused and another member who acted as Managing Director none other than brother-in-law of the deceased. It is they who played vital role and entire

transactions conducted by that Managing Director and he was purposefully added in the complaint with a malafide intention and none of the ingredients of the offence under Section 306 IPC that attracts and the First Information Report is thereby liable to be quashed. It is also the contention that they are no way responsible for day to day affairs of the said chit fund business of the entity. The counsel for the petitioner reiterated the same and drawn attention of the Court to the ingredients of Sections 306 and 107 IPC, saying thus nowhere attract even on face value of the First Information Report averments to rope the petitioners and the same is liable to be quashed.

3. Learned public prosecutor opposed the petition stating the investigation is in progress and pending investigation there are no grounds to quash the crime proceedings. He also submits that A1 to A4 are in abscondance since date of registration of the crime on 14.12.2018.

4. Heard and perused the material on record.

5. The alleged occurrence taken place was on 05.12.2018. A perusal of the case dairy submitted with instructions of the police by the learned public prosecutor shows that for the demands of the deceased fifteen days prior to the report to show the records and to repay the money spent by them, the accused 1 to 4 replied negligently and threatened to do

whatever he can and thereby he committed suicide and they are responsible.

6. The *de facto* complainant in the statement during investigation as LW1 reiterated the same facts by saying the accused instigated the deceased thereby to commit suicide. LW2 is wife of deceased not even witness to any occurrence, but for stated she came to know from LW1 about the accused not showing the accounts. What she stated further is that the accused persons many a time denied the deceased and asked him if he want to die let die from which the deceased felt mental pressure and committed suicide. LW3 - Smt.Kundarapu Rani, is none other than daughter of the deceased and her statement nowhere improves more than what LW2 stated supra. LW4 is husband of LW3 who came to know from the telephone call of LW1 and came there in saying despite better treatment, the deceased breathed his last and his further statement is like that of LWs.2 and 3 so also of LW5 Karunakar. LW6 is the photographer of the dead body. The hospital record shows before death the patient was unconscious allegedly consumed poisonous substance at his residence on 05.12.2018 and death summary of the Yashoda Hospital shows date of admission 06.12.2018 and time of death 05.38 a.m. on 14.12.2018 and got admitted in the hospital as in-patient and treated and death intimation given to the police.

7. What the First Information Report of the *de facto* complainant shows is accused were not showing accounts and not contributing to what the deceased paid to the customers for the loss suffered in the chit business, and there is a suicide note of the deceased left saying the accused are responsible for his death and their harassment resulted his death. From the investigation it mentions that a pink colour paper is containing the suicide note of the deceased stating the persons responsible for his death are Koduri Bikshapathi, Bathini Madhusudan, Palle Mallesham and Gudu Vivekanand.

8. There is no doubt force in the submission of the counsel for the petitioners that in the absence of saying how, from mere mentioning of they are responsible no way make them liable even from such note for any offence much less to the grave offence under Section 306 IPC, for nothing showing they abetted the deceased by instigation or aiding to commit suicide. The First Information Report, at the cost of repetition, mentions even deceased wanted to commit suicide, from the accused asked him to do what he wanted to do, if at all to die, that even taken as true may not by itself be suffice to rope them to the offence under Section 306 IPC, as can be seen from the principle laid down in this regard in the decision placed reliance of ***Sanju Vs. State of M.P.***¹, holding

¹ (2002) 5 SCC 371

that ingredients under Section 107 IPC to attract Section 306 IPC, denotes instigation or aiding to do some drastic or unadvisable action or to stimulate or to incite. Presence of *mens rea* is concomitant of instigation and even the words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with *mens rea*, to attract the offence, for suicide was not proximate to the quarrel, though deceased has named them in the suicide note. Thus, on facts there is no offence under Section 306 IPC made out.

9. Having regard to the above, the Criminal Petition is allowed by quashing the proceedings in Crime No.503 of 2018 registered for the offence punishable under Section 306 IPC.

Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Date:21.01.2019
vhh

Dr. B.SIVA SANKARA RAO J,